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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4031 of 1999

to

FIRST APPEAL NO.4037 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECD.REVABHAI

MANGABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners

Mr. V.M. Pancholi, AGP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 06/07/2000

COMMON ORAL JUDGEMENT

1. Appellants-original claimants have filed this group of appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated December 11, 1998 rendered by the learned Assistant Judge, Sabarkantha, at Himmatnagar, in Land Reference Cases Nos.2381 of 1989 to 2387 of 1989, by which common judgment and award, the reference applications filed by the appellants were dismissed on the ground that, as there was consent award, the appellants were estopped from filing reference applications under Section 18 of the Act.

2. Agricultural lands of the appellants situated in the sim of village Babsar, Taluka Idar, were placed under acquisition for the public purpose of Dharoi Jalahar Yojna by notification issued under Section 4(1) of the Act, which was published in the official gazette on February 19, 1972. After following the usual procedure under the relevant provisions of the Act, declaration under section 6 of the Act was made, which was published in the government gazette on June 8, 1972 and June 23, 1972. From the record of the case, it transpires that on July 11, 1972, agreements were entered into between the Special Land Acquisition Officer and the appellants with regard to price of acquired lands. On the same day, award Exh.4 was made by the Land Acquisition Officer offering compensation at the rate of Rs.2156 per Acre for jirayat land and Rs.2848 per Acre for irrigated lands. The Land Acquisition Officer awarded ex-gratia payment at the rate of 25% over the market value offered to the respective claimants for their lands. The Land Acquisition Officer also awarded solatium at the rate of 15% over the market value and ex-gratia payment in view of the compulsory nature of acquisition. On the same day, i.e. on July 11, 1972, possession of acquired lands was taken by the Special Land Acquisition Officer.

3. The appellants were of the opinion that compensation offered by the Land Acquisition Officer was inadequate and, therefore, they filed applications on August 7, 1972 under Section 18 of the Act, requiring the Land Acquisition Officer to refer their applications to the District Court, Sabarkantha, for determination of market value of acquired lands. In the reference applications, the appellants claimed compensation of irrigated lands at the rate of Rs.14,000/- per Acre and Rs.13,000/- per Acre for non-irrigated lands. The said

applications were referred by the Land Acquisition Officer to the District Court, Sabarkantha, where they came to be numbered as Land Acquisition Reference Nos.2381 of 1989 to 2387 of 1989.

4. The respondent-State of Gujarat filed written statement at Exh.10, inter alia, contending that the applications filed by the claimants were time-barred. It was denied that the acquired lands were fertile and irrigated lands and were having N.A. potentiality.R

highly exaggerated. It was averred that the claimants had not lodged their claim before the Land Acquisition Officer and, hence, the applications were liable to be dismissed. It was averred that the applications filed by the claimants were barred by principles of estoppel. On the rival assertions of the parties, the Reference Court framed common issues at Exh.11, which are as under:-

1. Whether the compensation awarded to the claimant is inadequate ? If yes, what additional compensation should be awarded ?
2. What order ?

5. The claimants, to substantiate their claim for enhanced compensation, examined (1) Tejabhai Motibhai claimant of Land Reference Case No.2387 of 1989 at Exh.32 and (2) Joravarsinh Jawansinh at Exh.45. On behalf of the respondents, Abdul Sattar Abubakkar Memon, who was serving as Talati-cum-Mantri in Babsar Group Gram Panchayats, was examined at Exh.50, and Veeratbhai Mohanlal Vora, who was at the relevant time serving as Deputy Collector and Special Land Acquisition Officer was examined at Exh.56. The claimants produced certified copies of revenue record of acquired lands at Exh.33 to 41, certified copy of judgment and award rendered in Land Acquisition Case no.1466 of 1989 to 1740 of 1989 at Exh.42, and certified copy of sale deed at Exh.43. The respondents produced documentary evidence such as statements of the claimants recorded by the Land Acquisition Officer at Exh.57 to Exh.64, agreements under Section 11(2) executed between claimants and Special Land Acquisition Officer at Exh.65 to Exh.72, and certified copy of judgment and award rendered in Land reference Cases Nos.1137 of 1987 to 1157 of 1987 at Exh.88.

6. The Reference Court, on appreciation of oral as well as documentary evidence, determined market value of

acquired lands at the rate of Rs.220 per Acre for the irrigated land i.e. Rs.8800 per Acre for the irrigated lands, and Rs.200 per Acre for the non-irrigated lands equivalent to Rs.8000 per Acre. Thus, the Reference Court has awarded additional compensation to the appellants at the rate of Rs.4700 per Acre for the irrigated land and Rs.4990 per Acre for the non-irrigated lands. The Reference Court deduced that, as Special Land Acquisition Officer had passed award on the basis of consent of the parties, the appellants were estopped from filing applications under Section 18 of the Act. In view of the aforesaid conclusion, the Reference Court held that the reference applications filed by the appellants under Section 18 of the Act for enhanced compensation were not maintainable as the award was passed under Section 11(2) of the Act. The said finding of the Reference Court dismissing the reference applications is challenged by the appellants by filing these appeals.

7. Learned counsel Mr. J.M.Patel for the appellants and learned AGP, Mr. V.M. Pancholi for the State have taken us through the entire record and proceedings produced before the Reference Court.

8. Learned counsel Mr. J.M. Patel has also produced paper book containing important documents produced before the Reference Court. Learned counsel for the appellants has vehemently submitted that agreements alleged to have been executed by the claimants, which were produced at Exh.65 to Exh.72, were in English language, whereas the claimants being illiterate, did not know English language and, therefore, the Reference Court has erred in placing reliance on the said agreement. Learned counsel for the appellants further submitted that alleged agreement produced at Exh.65 to Exh.72, were not signed by the Acquiring Body and, therefore also, no reliance could have been placed on those agreements. Learned counsel for the appellants further submitted that, in the so-called statements of claimants produced at Exh.57 to Exh.64, the price of the land acquired was stated to be Rs.3100 per Acre for non-irrigated land and Rs.4100 per Acre for the irrigated lands, whereas, in the alleged agreement, Exh.65 to Exh.72, no price, as agreed upon in the statements, was mentioned and, therefore, the agreements were concocted and thumb marks of the claimants were obtained on the blank printed forms. Learned counsel for the appellants further submitted that, in the written statement filed by the State of Gujarat, no contention was raised that the reference applications were barred as there was consent award under Section 11(2) of the Act, nor any issue was

framed by the Reference Court with regard to reference applications being barred by Section 11(2) of the Act and, therefore, the Reference Court ought not to have dismissed the reference applications. Learned counsel for the appellants further submitted that award Exh.4 was not made under Section 11(2) of the Act and, therefore, it cannot be said to be consent award as prescribed under the Act. It is further urged that, if there was consent award, then the Special Land Acquisition Officer ought to have awarded market value of acquired lands at the rate of Rs.3100/per Acre for non-irrigated lands and Rs.4100/- per Acre for irrigated lands, but, in the award, the Special Land Acquisition Officer had awarded Rs.2156/- per Acre for jirayat land and Rs.2848/- per Acre for the irrigated lands, which was contrary to the statements recorded by the Special Land Acquisition Officer produced at Exh.57 to Exh.64. Learned counsel for the appellants further submitted that, if award Exh.4 was consent award, then the Special Land Acquisition Officer could not have awarded solatium as per Section 23(2) of the Act. Learned counsel for the appellants, therefore, submitted that, as there was no consent award, in absence of any pleading to that effect or any issue being framed by the Reference Court for its determination, the Reference Court has committed grave error in dismissing reference applications filed by the appellants on the ground that the said applications were barred by provisions of Section 11(2) of the Act.

9. Learned AGP, Mr. V.M. Pancholi, has submitted that the respondents had proved that the claimants before the Special Land Acquisition Officer had made statements that they may be awarded compensation for acquired lands at the rate of Rs.3100 per Acre for non-irrigated land and Rs.4100 per Acre for irrigated land and, consequent upon the said statements, agreements under Section 11(2) of the Act were executed by the respective claimants and, on the strength of those statements and agreements, the Land Acquisition Officer had made award under Section 11(2) of the Act and, therefore, the Reference Court was justified in holding that the reference applications were barred by Section 11(2) of the Act and the claimants were estopped from filing applications under Section 18 of the Act, as there was consent award and, therefore, appeals be dismissed with costs.

10. In the written statement filed by the State of Gujarat, only contention as regards maintainability of the reference applications was that the said applications were barred by period of limitation. It was stated in the written statement that the claimants were estopped from filing reference applications. If the award was passed

under Section 11(2) of the Act, then the respondent-State of Gujarat ought to have contended that the applications were barred as there was consent award, but, no such contention was raised in the written statement and the Reference Court had also not framed any issue that the applications were barred as there was consent award. In absence of any pleading or any issue, the Reference Court had permitted the Special Land Acquisition Officer to produce the alleged agreements and statements of the claimants on record, when the evidence of the claimants was already over. No suggestion or question was put to the claimants during their cross-examination by learned Government Pleader, who appeared in the Reference Court, that, as there was consent award, they were estopped from filing applications under Section 18 of the Act. Therefore, the Reference Court had committed serious error in permitting the respondents to produce statements of the claimants and the alleged agreements purported to have been executed under Section 11(2) of the Act after the evidence of the claimants was already closed, with the result that no opportunity was given to the claimants to explain that the said statements and agreements were got up and concocted and no such statements or agreements were executed by them. The award, which is produced at Exh.4 on the record of this case, also indicates the said award was not passed under Section 11(2) of the Act. If the award was made under Section 11(2) of the Act, then the claimants ought to have been awarded compensation at the rate of Rs.3100/- per Acre for non-irrigated land and Rs.4100 per Acre for irrigated land, as stated in their statements produced at Exh.57 to Exh.64. On the contrary, the Land Acquisition Officer had awarded compensation at the rate of Rs.2156 per Acre for jirayat land and Rs.2848/- for the irrigated land and had also awarded ex-gratia payment at the rate of 25% over the market value awarded to the claimants. If it was consent award, then Land Acquisition Officer would not have awarded solatium at the rate of 15% per annum on the market value and the ex-gratia payment. Award Exh.4 cannot be called a consent award made under Section 11(2) of the Act. As there was no consent award, the claimants were entitled in law to file applications under Section 18 of the Act claiming enhanced compensation and requiring Land Acquisition Officer to refer their applications to the District Court, Sabarkantha, for determination of market value of their acquired lands. The fact that the applications filed by the claimants were forwarded to the District Court by the Special Land Acquisition Officer also strengthens the case of the claimants that there was no consent award. If the award was made with the consent of the claimants, then the Land Acquisition Officer could have rejected applications

filed by the claimants and could not have referred the said applications to the District Court for determination of market value of acquired lands. These distinguishing features clearly show that there was no consent award and, therefore, the claimants were entitled to make application for enhanced compensation under Section 18 of the Act. In our view, and the Reference Court had erred in holding that the claimants were estopped from filing applications under Section 18 of the Act in view of there being consent award made under Section 11(2) of the Act. The facts, as narrated above, clearly indicate that the salient features of making consent award were totally lacking. The amount, as agreed between the claimants and the Special Land Acquisition Officer by so-called statements and agreements, was not awarded by the Special Land Acquisition Officer in his award. An award can be called consent award provided it is made by consent or as a result of consensus arrived at by both the parties, i.e. claimants and Acquiring Body. In absence of salient features as narrated above, award Exh.4 cannot be called consent award and, therefore, the finding of the Reference Court that the applications filed by the claimants under Section 18 of the Act were barred, deserves to be quashed and set aside.

11. With regard to quantum of compensation, the Reference Court had determined market value at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands.

12. Before the Reference Court, the claimants had examined Tejabhai Motibhai at Exh.32. He deposed that acquired lands were having high fertility and agriculturists were taking three crops in a year. He claimed that from the acquired lands, the agriculturists were earning income of Rs.20,000 to Rs.22,000/- per Acre per annum. He also claimed that the lands were irrigated lands and the agriculturists were getting irrigation facility from the wells situated in the acquired lands. The witness produced certified copy of revenue record indicating that all the acquired lands were having irrigation facilities and the claimants were raising three crops in a year. The witness also produced, during his deposition, certified copy of previous award of the Reference Court at Exh.42. During cross examination, the witness denied that acquired lands were uneven and were not fertile. He denied that acquired lands of previous awards Exh.42 were more fertile and, therefore, they were not comparable with present acquired lands. The claimants' witness Joravarsinh Jawansinh (Exh.45) produced

sale deed Exh.46 with regard to lands of village Agiya. By sale deed Exh.46, agricultural lands of village Agiya bearing Survey No.333, admeasuring 1 Acre-8 Gunthas, were sold for Rs.10,000/- on October 25, 1972. Witness Joravarsinh Jawansinh deposed that village Agiya was at a distance of 3 kms from village Babsar and lands of village Babsar were having high fertility than lands of village Agiya. The Reference Court, for determination of market value of acquired lands, relied upon previous award Exh.42, which was in respect of lands of village Babsar. The Reference Court also relied upon previous award Exh.88, which was in respect of acquired lands of village Bhanpur which was adjoining to the village Babsar. Market value of acquired lands of village Bhanpur as on January 1, 1971 was determined at the rate of Rs.220/- per Are for irrigated land and Rs.200 per Are for non-irrigated land. In previous award Exh.42, which was in respect of lands of village Babsar, market value of the lands of village Babsar was determined as on August 2, 1972, at the rate of Rs.240/- per Are for the irrigated lands. The Reference Court, taking into consideration previous awards Exh.42 and Exh.88, deduced that acquired lands of same village Babsar and acquired lands of village Bhanpur were relevant and comparable for determination of market value of present acquired lands. The Reference Court, in ultimate analysis, determined market value of the present acquired lands at the rate of Rs.220/- per Are for irrigated land and Rs.200/- per Are for non-irrigated land. However, the Reference Court, while awarding compensation for acquired lands at the rate of Rs.8800/- per Are for irrigated lands, had deducted Rs.4100/- per Acre already awarded by the Special Land Acquisition Officer, and awarded net Rs.4700/- per Acre for irrigated lands. Similarly, the Reference Court, for non-irrigated lands, determined market value at the rate of Rs.8000/- per Acre less Rs.3100/- per Acre already awarded by the Special Land Acquisition Officer. By award Exh.4, the Special Land Acquisition Officer had not awarded compensation of acquired lands at the rate of Rs.4100/per Acre for irrigated lands and Rs.3100/- per Acre for non-irrigated lands. In fact, the Special Land Acquisition Officer had awarded compensation at the rate of Rs.2848/- per Acre for irrigated lands and Rs.2156/- per Acre for non-irrigated lands. We are of the opinion that the market value determined by the Reference Court at the rate of Rs.8800/per Acre for irregulated lands and Rs.800/- per Acre for non-irrigated lands deserves to be confirmed. In absence of any appeal by the State of Gujarat with regard to determination of market value of acquired lands by the Reference Court and, as the claimants had not claimed enhanced compensation for acquired lands in these appeals,

we confirm determination of market value of the acquired lands of village Babsar as on February 19, 1972 at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/per Acre for non-irrigated lands. Therefore, we do not disturb the finding of the Reference Court with regard to determination of market value of acquired lands situated at village Babsar, as on February 19, 1972. Other statutory benefits extended in favour of the appellants are also hereby confirmed. However, it is made clear that the appellants would not be entitled to interest on the amount of solatium under Section 23(2) of the Act in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583.

13. As a result of foregoing reasons, all the appeals filed by the appellants are allowed. The market value of the acquired lands of village Babsar as on February 19, 1972 determined by the Reference Court at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands is hereby confirmed. The finding of the Reference Court that, as there was consent award, the claimants were estopped from filing reference applications, is quashed and set aside. We hold that the reference applications filed by the appellants-claimants are maintainable and the claimants are entitled to compensation of acquired lands of village Babsar as on February 19, 1972 determined by the Reference Court at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands including the amou

common judgment and award dated December 11, 1998 rendered by the learned Assistant Judge, Sabarkantha, at Himmatnagar, in Land Reference Cases Nos.2081 of 1989 to 2387 of 1989, is modified to the aforesaid extent. We direct the respondents to deposit the remaining amount of compensation excluding the amount paid by the Land Acquisition Officer as per Award Exh.4 in the Reference Court, within four months from today. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(M.H. Kadri, J.)

(D.P. Buch, J.)

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